

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 436 of 1996

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SPECIAL CIVIL APPLICATION No 4101 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No ef
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

GUJARAT STATE COOPERATIVE COTTON FEDERATION LTD

Versus

HARESH P PANDYA

Appearance in Spl. C.A. No. 436 of 1996:

MR BS PATEL for Petitioner

MR BA VAISHNAV Respondent No. 1

Appearance in Spl. C.A. No. 4101 of 1996:

MR. AK CLERK for petitioner

MR. BS Patel for respondent

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/09/96

CAV COMMON JUDGEMENT

1. Rule in both Special Civil Applications. The respective advocates waive service of Rule on behalf of the respective respondents. These two petitions under Article 227 of the Constitution of India are directed against the judgment and award passed by the Labour Court at Ahmedabad dated 30th September, 1995. Since the two petitions are cognate petitions, directed against the same judgment and award of the Labour Court filed by rival parties to the said proceedings, these two matters were ordered to be heard together with the consent of the learned advocates appearing for the parties and were heard together and are now being disposed of by this Common Judgment and Order.

2. The Gujarat State Cooperative Cotton Federation Limited, is petitioner - employer in first petition and one Hareesh P.Pandya is the respondent workman in the first petition.

3. It is the case of workman that he joined the services of employer Corporation on 1st of March, 1979 as Senior Clerk and was working as such. His services were illegally terminated by the employer by creating and fabricating a false letter alleged to have been written by the workman. Since the workman was not permitted to resume duties, he filed a Complaint (LCA) No. 22 of 1987 in Reference (LCAD) No. 133 of 1985 before the Labour Court at Ahmedabad and the Labour Court by the aforesaid award dated 30th September, 1995 allowed the Reference and directed the employer to reinstate the workman in service with continuity of service and full back wages and all consequential benefits. The Labour Court also directed the payment of costs.

4. It is the further case of the workman that he was taken back in service by the order dated 28th June, 1991 with effect from 4th of July, 1991 during the pendency of the complaint before the Labour Court and that date he joined the service and was in service at fixed salary of

Rs. 2,183/-. However, he had been denied the benefits of continuity of service and consequential benefits and back wages, promotion, increments, etc. flowing from the award dated 30th September, 1995. The workman further contended that thereafter he addressed the first letter to the employer on 24th November, 1995 requesting the employer to give him the full payment of back wages and other monetary benefits as directed by the award of the Labour Court. The employer, however, omitted to comply with the said request. The workman even filed caveat in the High Court of Gujarat to safeguard his interest against any ex parte order being passed against him. The workman even addressed letter dated 6th April, 1996 to State of Gujarat, Commissioner of Labour and Government Labour Officer for taking appropriate action against the employer under Section 32 of the Industrial Disputes Act, 1947. Such complaint was followed by reminder dated 4th May, 1996. The authorities, however, did not take any action against the employer and its responsible officer and hence out of exasperation he has filed the second petition for directing the employer to comply with the award passed by the Labour Court on 30th September, 1995 in Complaint (LCA) No. 22 of 1987 in Reference (LCAD) No. 133 of 1985. The court issued show cause notice on the employer on 25th June, 1996.

5. On the other hand, the case of the employer in the first petition is that the workman was working as Senior Clerk and was the General Secretary of the Union and that on his own he submitted his resignation freely and voluntarily on 31st July, 1987 for his better prospects. The employer also submitted that such resignation was fully processed and approved on 14th of August, 1987 by the employer and information in the nature of telegram/registered Post A.D. was sent to the workman. The workman, however, filed a complaint (LCA) No. 22 of 1987 in the Labour Court at Ahmedabad stating that his services have been terminated illegally and orally and that he has not been permitted to sign the Muster Roll and, therefore, prayed for interim stay against the employer. The employer appeared and filed written statement. After hearing the parties, the stay which was granted by the Labour Court was vacated on 7th September, 1987 but the workman was admittedly permitted to resume or join his duties with effect from 4th of July, 1991 and it was agitated before the Labour Court that in fact there was no victimisation by the employer towards the workman nor was his termination bad in law and that the case of the workman that he has not submitted resignation was totally false, got up and concocted.

6. On the aforesaid rival stand of the parties, the Labour Court ultimately passed the award on 30th September, 1995 after recording oral as well as documentary evidence of the parties in Complaint (LCA) No. 22 of 1987.

7. The aforesaid judgment and award of the Labour Court, Ahmedabad, dated 30th September, 1995 is thus under challenge by the employer and the workman seeks enforcement thereof by the authorities.

8. Mr. B.S. Patel, learned Counsel appearing for the employer has assailed the aforesaid award of the Labour Court on various grounds, more particularly, referable to the wrong, fallacious and untenable appreciation of evidence by the Labour Court, which in his submission, would at least require this Court to reassess and re-appreciate evidence and to accept the case of the employer that in fact the workman was terminated because of his own resignation dated 30th July, 1987 which became effective from 14th August, 1987. Before the Labour Court, the oral as well as documentary evidence was recorded and even written arguments were submitted. The main submission of the employer was that there was sufficient reason to hold that the workman has tendered free and voluntary resignation for sufficient reasons and that he was, therefore, not entitled to any relief. The case of the employer in the oral evidence at Exhibit - 48 was that in fact resignation was submitted by workman on 31st July, 1987 with a request to accept it immediately and that the employer thereupon processed the resignation and as an exceptional case, accepted the resignation on 14th of August, 1987 and in fact information was sent to the workman by UPSC and Registered A.D. and that he was therefore terminated from service from that date. On the other hand, it was the case of the workman that on 17th August, 1987, when he went to the Office to resume his duties, he was not permitted to resume his duties and was informed orally that he has already resigned from service and his resignation was accepted and that he was no longer in service. The workman being a protected workman under Section 33 of the said Act, whose earlier application was already pending before the Labour Court, he, therefore, legally and rightfully approached the Labour Court for appropriate relief and the Labour Court has after appreciating evidence, accepted the case of the workman.

9. On appreciation of evidence, the Labour Court, in fact, found that the workman was being coerced to resign

from the post and that instead of placing the Muster Roll, the employer started placing blank pages which were required to be signed by the workman and that on 17th August, 1987 when he went to resume his duties, he was prevented by the watchman and he immediately met the Managing Director, who stated that he has already been terminated from service as he has resigned from service for his better prospect. He was also informed that his resignation was in fact accepted on 14th August, 1987 by Chairman of the employer and that therefore he was no longer in service and he was duly intimated about the same by Registered Post A.D. as well as by UPSC. It was asserted that such resignation was voluntary, free and was not given under any duress, threat or pressure. The workman on the other hand in his oral evidence stated that he was employed as Senior Clerk in Marketing Department and was General Secretary of Employees' Union and that he has never tendered his resignation on 31st July, 1987. 15th August, 1987 was holiday and 20th August 1987 was the first date before the Labour Court in the earlier complaint when he was informed that he has already resigned from service. Such resignation, however, was not shown to him nor was the same served on him. When he reached home, the neighbour gave to him the telegram and the receipt allegedly issued by him accepting that he has resigned. He has deposed on oath that he has never signed any resignation and that blank sheet of paper on which he has signed which was to be used as Muster Roll is subsequently in mala fide and in bad faith utilised by the employer so as to adversely affect the rights of the protected workman and so as to throw him out of his service.

10. When Mr. B.S. Patel, learned Counsel was confronted with the question as to why from 31st July, 1987 to 14th August, 1987, no action was taken on the resignation and as to why the workman was not discharged from service, he half heartedly replied that some procedure was to be followed and it was to be decided as to whether one month salary should be insisted for from the workman or not. The answer is not convincing at all. The Labour Court has rightly found no substance in such answer. The fact remains that for a period of about 17 days, no action is taken on the alleged letter of resignation which is found to be got up and concocted after appreciation of evidence by the Labour Court.

11. Lastly Mr. B.S. Patel, learned Counsel appearing for the employer submitted that the finding reached by the Labour Court that resignation did not bear the full signature and that it was not in a proforma and that

there was no inward number on the resignation, was not correct and that he tried to refer to number of other resignations given by other workmen which were not in usual proforma. He tried to apply the principle of contradictions arising from these type of resignations and therefore he submitted that the evidence of the workman was liable to be rejected.

12. Mr. B.S. Patel, learned Counsel for the petitioner very vehemently submitted before the Court that no reliance could have been placed on the evidence of Hasmukh Prabhaskar Exhibit -30 who has deposed to the effect that in fact for the purpose of getting resignation of respondent workman typed, one Madhuben M. Ganatra came to him around 12.30 p.m. He also stated that the said sheet was a blank sheet with signature of the respondent workman at the top. He also stated that since Muster Roll was not available, signatures on the blank sheet were being taken from the workman and that on 31st July, 1987 respondent workman has put his initial. There was hardly any place within which the resignation could be typed. However, the witness was convinced that it was solely with a view to cutting a joke with the workman, such typing was being done. He has in his evidence struck to the version and has stated that in fact the resignation was not written or typed by the workman but he was made to type it. After appreciation of evidence of this witness, the Labour Court has found that evidence of the said witness at Exhibit 30 was convincing and acceptable. The way in which the management has tried to explain away his conduct did not find favour with the Labour Court and in that view of the matter even on the basis of such evidence, the Labour Court has after appreciation thereof in accordance with law, found that resignation of the workman was false, got up and concocted and that the workman was therefore required to be reinstated with full backwages and other consequential benefits. Mr. B.S. Patel also submitted that Section 33-A of the Industrial Disputes Act, 1947 had no application to the facts and circumstances of the case. Such submission, obviously, has no merit and shall have to be rejected in view of the reported binding precedence of the Apex Court and the Delhi High Court in the two following cases, namely, (1) BISHWANATH PRASAD & ANOTHER, reported in 1971 (II) LLJ 340. A three Judges of the Apex Court while considering scope of Sections 33 and 33-A of the Industrial Disputes Act, 1947, clearly taken the view that since the proceedings against or initiated by a protected workman were pending in the Labour Court, till the disposal of the such proceedings, employer had no power to resort to any disciplinary

action and the workman had a right under Section 33(2)(b) of the said Act. The three Judges Bench of the Supreme Court accepted the ratio of the decision of the Apex Court in earlier two decisions and found that it was open to the workman always to take exception to any action taken against him by the Management in ignoring the provision of Section 33(2)(b). The Supreme Court having thus concluded the matter against the management and in favour of the workman and in view of very clear statutory provision of Section 33(2)(b), there is little scope for any counter submission to be accepted. Even the Delhi High Court has taken the view that the view which is taken by the Supreme Court in the case of SINDHU RESETTLEMENT CORPORATION LIMITED, reported in 1968 (16) Factory Law Reporter, 363, is laying down the correct position of law and also the judgment having been delivered by a bench of more Judges is binding. None of the submissions of the petitioner employer has therefore any substance which would call for any interference of this Court, that too under its certiorari jurisdiction under Article 227 of the Constitution of India and more so when the person through whom the letter of resignation is got typed has very categorically stated that such letter was got typed by the management on the blank paper above the signature of the workman and therefore also the order of the Labour Court is preeminently just and does not call for any interference by this Court.

13. In the result, Rule in Special Civil Application No. 436 of 1996 is hereby discharged and judgment and order of the Labour Court is fully confirmed and Rule in Special Civil Application No. 4101 of 1996 is made absolute. Respondents No.1 to 5 are also directed to seek compliance with the judgment and order of the Labour Court and to take appropriate action forthwith.
